



**IN THE HIGH COURT OF SWAZILAND
JUDGMENT**

Case No. 1145/2015

In the matter between:

SIKHUMBHUZO SIHLONGONYANE

Plaintiff

And

GOOD SHEPHERD MISSION HOSPITAL

Defendant

Neutral citation: *Sikhumbuzo Sihlongonyane v Good Shepherd Mission Hospital* [1145/2015] SZHC 40 [2017] (2 March 2017)

Coram : **T. L. Dlamini J**

Heard : 2 December 2015

Delivered : 2 March 2017

Summary: *Civil Procedure – Application for judgment by default – Inconsistencies*

in pleadings filed by Plaintiff – Insufficiency of evidence to prove other

relevant issues.

Held: *The action cannot succeed because of the irreconcilable inconsistencies in the pleadings – The evidence is insufficient for an award of the order sought – Application for judgment by default therefore fails and is dismissed – On the issues pleaded, and on the evidence placed before court the action cannot succeed and is accordingly dismissed.*

JUDGMENT

[1] This is an action proceedings wherein the Plaintiff made an application for default judgment following the Defendant's failure to file an appearance to defend.

- [2] On the 28th July 2015 the Plaintiff sued out summons against the Defendant claiming an amount of Two Million Emalangenani (E2, 000 000.00) as damages occasioned as a result of an alleged negligent conduct of the Defendant.
- [3] In terms of the particulars of claim, the Plaintiff was a suspect in the commission of an offence and was being interrogated by members of the Royal Swaziland Police on or about December 2011. During the interrogation the police suspected that the Plaintiff's state of mind was challenged and they took him to the Defendant hospital for examination.
- [4] The Plaintiff alleges that a doctor at the Defendant hospital simply prepared a report authorizing the police to commit Plaintiff to the National Psychiatric Hospital in Manzini without first conducting on him a medical examination. Consequently, the Plaintiff was admitted to the Psychiatric Hospital "*for about four (4) days*" (para 8 of particulars of claim).

- [5] The Plaintiff further alleged that when an examination was conducted by a doctor at the Psychiatric hospital, Plaintiff was found to be mentally stable, with no mental challenges, and was discharged immediately.
- [6] The Plaintiff pleaded that consequent to his admission for four days at the Psychiatric Hospital, he was subjected to gruesome treatment by the patients of the hospital. He further pleaded that he suffered severe stress, hypertension and severe shock with pain and suffering as a result. He pleaded that he was insulted and defamed in the eyes and perception of right thinking people as they perceived him to be insane.
- [7] Plaintiff alleged that on the basis of the false stigma that was attached to him consequent to the negative perception that people had about him, he lost a lot of friends and business opportunities. The woman he was engaged to thereafter changed her mind hence he is not married even todate. She considered him as a lunatic who is not worth her hand in marriage. He therefore claims to have suffered damages in the amount claimed and holds the Defendant liable for payment thereof.

[8] The Defendant did not file any papers in opposition to the claim, hence the plaintiff applied for judgment by default as contemplated in terms of Rule 31 (3) (a) of the Rules of this court. The Rule provides as follows:

“ 31. (3) (a) Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (5) for default judgment and the court may, where the claim is for a debt or liquidated demand, without hearing evidence, oral or documentary, and in the case of any other claim, after hearing such evidence as the court may direct, whether oral or documentary, grant judgment against the defendant or make such order as to it seems fit.

[9] On reading the papers filed of record, I noted inconsistencies in the pleadings made in the particulars of claim and affidavit in proof of damages. Counsel for the plaintiff was therefore called upon to appear in open court for the purpose of explaining the inconsistencies. He duly appeared on the date appointed by the court, being 2nd of December 2015.

[10] On the papers, the Plaintiff pleaded in the particulars of claim in the following manner:

“ 6. The Police took Plaintiff to a medical doctor employed by Defendant (“Defendant’s Doctor”) whose names and further particulars are to the Plaintiff unknown. The said medical doctor did not examine the Plaintiff nor performed any diagnosis to confirm the suspicion that Plaintiff’s mind was malfunctioning.

7. Defendant Doctor instead of examining Plaintiff simply prepared a medical report authorizing the police to commit Plaintiff with the National Psychiatric Hospital in Manzini (“the Hospital”) on the strength of the defendant doctor’s report that Plaintiff was mentally unstable (own emphasis).

8. Defendant was committed to the Hospital for about (4) days and was examined by one of the medical doctors employed by the hospital who diagnosed Plaintiff as mental (sic) stable, with absolutely no mental challenges whatsoever.

[11] In the affidavit filed in proof of damages, the plaintiff states the following:

“7. When I was subsequently taken to the Defendant’s Hospital for diagnosis by a medical doctor I was never examined by anybody not even a nurse. Apparently the Defendant’s Hospital staff merely filled the blanks on referral or admission form whatsoever necessary for my admission to the Psychiatric Hospital (own emphasis).

[12] The alleged fact pleaded in the particulars of claim is clearly inconsistent with the deposition made in the affidavit. Plaintiff, in other words, informs the court that a medical doctor employed by the Defendant hospital prepared a medical report authorizing the police to commit him to the National Psychiatric Hospital because he was mentally unstable. At the same time he informs the court that at the hospital he was not examined by a doctor or even a nurse. Instead a hospital staff member filled the blanks on the referral form, a form that is necessary for his admission into the Psychiatric hospital.

[13] Counsel for the Plaintiff when asked about this inconsistency, explained to the court that there is no inconsistency because a hospital staff member includes a doctor. I however hold a different view because the Plaintiff used the words in a manner that differentiates between a doctor, nurse and a member of staff. Where he makes reference to a doctor he specifically does so. A member of staff, as referred to by the Plaintiff, in my view refers to other employees of the hospital other than a doctor or a nurse.

[14] I therefore find the pleading in the particulars of claim to be inconsistent with the deposition made in the affidavit in proof of damages.

[15] A letter from the National Psychiatric Hospital dated 16th December, 2011 is attached to the notice of application for judgment by default. It is drafted in the following terms:

16th December, 2011

To whom it may concern

RE: SIKHUMBUZO SIHLONGONYANE : REF:MP 762/11

This is to confirm the above named was seen at our hospital on 19th November, 2011. A full mental status examination revealed no psychotic disorder.

Thanks for your assistance.

Yours faithfully

Dr. H.S. DLAMINI

MEDICAL OFFICER

[16] In terms of the above letter, plaintiff was seen at the National Psychiatric Hospital on the 19th November, 2011.

[17] Plaintiff pleaded the following facts in the particulars of claim:

*“4. On or about the month of December 2011 Plaintiff was apprehended by members of the Royal Swaziland Police based at Siteki (**“The Police”**) who were investigating a criminal offence of assault to which Plaintiff was a suspect.*

5. The police took plaintiff for interrogation in the normal way in which they interrogate suspects. During the interrogation process the Police suspected that Plaintiff’s state of mind was challenged and decided to take Plaintiff to Defendants hospital for medical examination to confirm their suspicion before taking Plaintiff to a psychiatric institution.”

[18] In the affidavit in proof of damages the Plaintiff deposed as follows:

*“2. I confirm that on or sometime in December 2011, I was taken for questioning by the Siteki Police (**“The Police”**) who were investigating a criminal matter of common assault laid by Gugu Longwe.*

[19] The date on which the Plaintiff was seen at the National Psychiatric Hospital (being 19th November, 2011) is not reconcilable with the date on which the Plaintiff pleaded that he was taken to the Defendant’s hospital by the police.

On this incoherent evidence Counsel for the Plaintiff submitted that it was a typing error. The correct date is the one that is given by the National Psychiatric Hospital.

[20] I am not convinced that this is merely a typing error because this date is pleaded in both the particulars of claim that were drafted and filed in July 2015, and also in the affidavit that was deposed to in November 2015. It appears to me, in my view, that this action is a fishing expedition, hence the inconsistencies in the pleadings.

[21] Counsel for Plaintiff applied for leave to amend the pleadings as contemplated in Rule 28 of the Rules of this court. The Rule provides as follows:

“28. (1) Any party desiring to amend any pleading or document other than an affidavit, filed in connection with any proceedings, may give notice to all other parties to the proceedings of his intention so to amend.”(own emphasis).

[22] Clearly an affidavit cannot be amended in terms of this rule. The pleading that counsel for the Plaintiff seeks to amend was, in addition to the

particulars of claim, also made in paragraph 2 of the affidavit in proof of damages. Consequently, the application for leave to amend the pleadings must fail and it is so ordered.

[23] In addition to the above, the evidence pleaded concerning the conduct of the doctor employed by the Defendant hospital is not sufficient to persuade the court to find in favour of the Plaintiff. Plaintiff pleaded in the particulars of claim in the following words:

“6. The Police took Plaintiff to a medical doctor employed by Defendant (“Defendant’s doctor”) whose names and further particulars are to the Plaintiff unknown. The said medical doctor did not examine the Plaintiff nor performed any diagnosis to confirm the suspicion that Plaintiff’s mind was malfunctioning.”(own emphasis).

7. Defendant Doctor instead of examining Plaintiff simply prepared a medical report authorizing the police to commit Plaintiff with the National Psychiatric Hospital in Manzini (“the Hospital”) on the strength of the defendant doctor’s report that Plaintiff was mentally unstable.”

[24] The evidence of another qualified medical doctor is required in order to prove that the Defendant’s doctor acted negligently as alleged by the

Plaintiff. To verbally engage a patient might be another way to determine if the patient is of sound mind or not. It is common knowledge that from a mere conversation with a person, the mental state of that person can be observed and determined if it requires treatment from a mental institution or hospital.

[25] Another issue that arises is the question of who must be responsible in the event the Plaintiff is found to have been detained in the Psychiatric Hospital yet he is found to have never been mentally unstable. The following questions come to mind in that regard.

- (i) Is the Psychiatric Hospital not responsible for determining questions relating to the mental stability of patients or persons brought for admission to the hospital?
- (ii) If a person is brought to the Psychiatric Hospital as a person whose mental status is suspect, is the Psychiatric hospital to admit that person into the patients' ward without first determining if the person is mentally stable or not?

[26] The degree of mental instability is not the same for all mental patients. The question then that comes to one's mind is the following:

Is the Psychiatric hospital not guided by the degree of mental instability in determining the ward of similarly challenged patients, a ward of patients in which the new patient is to be admitted?

[27] If the answer to the above question is in the affirmative, then it certainly requires a medical examination of the person's mental instability and the degree of instability before that person can be admitted into the hospital wards. This is a responsibility for the Psychiatric hospital doctors.

[28] In the present case it is pleaded that the Plaintiff was admitted into the Psychiatric hospital for four (4) days. An examination of his mental status however, revealed no psychotic disorder. There is therefore the question of which hospital is to be held liable for the admission of the Plaintiff into the Psychiatric hospital.

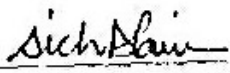
[29] The issues mentioned above are issues of evidence that, however, was not placed before the court. In a case where it was uncertain whether the Plaintiff was entitled to an immediate and unconditional order, judgment in default of entry of appearance was refused. **See herbstein and Van**

**Winsen: The Civil Practice of the Superior Court of South Africa, 4th ed
p. 537.**

[30] In a nutshell, there are inconsistencies in the Plaintiff's pleadings that are irreconcilable. In addition to that, the evidence placed before court is not sufficient to persuade the court to grant the order being sought. Consequently, the action cannot succeed in my considered view.

[31] The court therefore issues the following order:

1. The application for judgment by default fails and is dismissed.
2. The action does not succeed and is also dismissed.



T. L. DLAMINI
JUDGE OF THE HIGH COURT

For Plaintiff: P.K. Msibi

For Defendant: No appearance